

The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
Petitioner,  
  
v.  
  
MICROSOFT CORPORATION, *et al.*  
  
Respondents.

Case No. 2:15-cv-00102 RSM

**Declaration of Scott Hovey**

I, Scott Hovey, pursuant to the provisions of 28 U.S.C. § 1746, declare as follows.

1. I am an attorney in the Internal Revenue Service (Service) Office of Chief Counsel Small Business & Self Employed Division.

2. Since December 1, 2014, I have been serving on a detail in the IRS Office of the Associate Chief Counsel (Procedure & Administration), Branch 7.

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P.O. Box 683  
Washington, D.C. 20044-0683

3. The Associate Chief Counsel, (Procedure & Administration), located in the National Office in Washington, DC, is comprised of approximately 100 attorneys. P&A attorneys handle a broad range of issues and assignments that are fundamental to efficient tax administration such as providing legal advice to other Chief Counsel functions in all facets of judicial and tax practice. P&A attorneys also advise the Service on administrative requests under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and coordinate with the Department of Justice on all FOIA litigation involving the Service.

4. Microsoft Corporation (Microsoft) submitted its first administrative FOIA request with the Service on or about September 22, 2014. (Copy attached at Exhibit A).

5. On November 24, 2014, Microsoft filed its first lawsuit in the United States District Court for the District of Columbia (No. 1:14-cv-01982) (the First FOIA Suit), alleging that the Service had not responded to its first FOIA request for documents..

6. When an administrative FOIA request is submitted to the Service, the Service (Privacy, Government Liaison and Disclosure Division) is responsible for responding to the requestor's request. As with Microsoft's FOIA requests referenced in this declaration, FOIA requests submitted to the Service are assigned to Disclosure Office personnel for processing.

7. Once a requestor files a suit in district court under the FOIA, the Department of Justice Tax Division defends the Service in the lawsuit.

8. Once a FOIA case is in district court, the Department of Justice releases any documents to the plaintiff at the instruction of the Service and on the Service's behalf. The Service does not release documents to the plaintiff directly.

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1           9.     As one of my regularly assigned job duties, I was assigned as the Service's  
2 attorney to assist the Department of Justice with the defense of the first FOIA suit.

3           10.    On January 14, 2015, on behalf of the Service, the Department of Justice released  
4 to Microsoft all documents sought in the first FOIA request.

5           11.    On February 12, 2015, Microsoft sent a letter to the Department of Justice, in  
6 which Microsoft asked to supplement its September 22, 2014, FOIA request with an additional  
7 category of documents.

8           12.    On February 13, 2015, on behalf of the Service, the Department of Justice  
9 released additional documents that were responsive to Microsoft's supplemental FOIA request.

10          13.    On February 25, 2015, the first FOIA suit was dismissed by the district court.

11          14.    On December 12, 2014, Microsoft submitted three new administrative FOIA  
12 requests. (See copies attached at Exhibits B through D).

13          15.    On December 29, 2014, Microsoft submitted an additional administrative FOIA  
14 request to the Service. (See copy attached at Exhibit E).

15          16.    On March 12, 2015, Microsoft filed its second FOIA suit in the United States  
16 District Court for the Western District of Washington (No. 2:15-cv-00369) (the second FOIA  
17 suit) in connection with the four December 2014 FOIA requests.

18          17.    The Service's Answer in the second FOIA suit is due May 18, 2015.

19          18.    On March 12, 2015, Microsoft submitted two additional administrative FOIA  
20 requests to the Service. (Copies attached at Exhibits G and H).

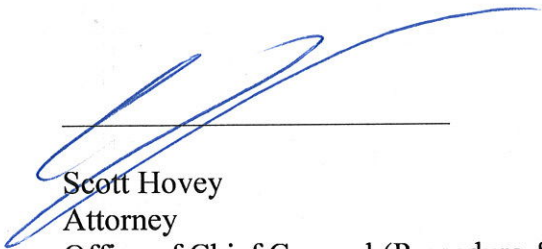
21          19.    The March 12, 2015, administrative FOIA requests are still pending.  
22  
23

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1 I declare under penalty of perjury that to the best of my knowledge and belief, the  
2 foregoing is true and correct.

3  
4  
5 April 10, 2015

6 Date

7   
8 Scott Hovey  
9 Attorney  
10 Office of Chief Counsel (Procedure &  
11 Administration)  
12 Internal Revenue Service  
13 1111 Constitution Avenue, NW  
14 Washington, DC 20224

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing has been made this 14th day of April, 2015, via the Court's ECF system to all parties and electronically to the following:

JAMES M. O'BRIEN  
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*/s/ Amy Matchison*  
AMY MATCHISON  
Trial Attorney, Tax Division  
U.S. Department of Justice

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